



POLICE DEPARTMENT

April 7, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Lawrence Abenanti  
Tax Registry No. 911591  
Quartermaster Section  
Disciplinary Case No. 84911/09  
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The above-named member of the Department appeared before me on March 16, 2011, charged with the following:<sup>1</sup>

1. Said Police Officer Lawrence Abenanti, while assigned to the Quartermaster Section, on or about December 7, 2008, at about 1615 hours, while off-duty, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer wrongfully telephoned an individual known to the Department, and stated to said individual, "I want you to fucking die. I'm going to kill you, just like the bird," causing said individual annoyance and alarm, and to fear for her safety.

P.G. 203-10, Page 1, Paragraph 5 – PERFORMANCE ON DUTY -  
PROHIBITED CONDUCT – GENERAL  
REGULATIONS

NYS Penal Law Section 240.30 (1) - AGGRAVATED HARASSMENT IN THE  
SECOND DEGREE

The Department was represented by David Green, Esq., Department Advocate's Office, and the Respondent was represented by John Tynan, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

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<sup>1</sup> A post-trial conference was also held on March 18, 2011, to clarify the record.

DECISION

The Respondent is found Guilty

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Alexander Crouch as its witness. The Department also offered into evidence the out-of-court recorded and handwritten statements of [REDACTED]

Sergeant Alexander Crouch

Crouch is assigned to the Transit Bureau Investigations Unit (TBIU). He commenced an investigation regarding the complaint of Tina Braun, the Respondent's [REDACTED] [REDACTED] [REDACTED] [REDACTED] Braun's complaint involved an allegation of aggravated harassment that she said occurred on December 7, 2008.

Crouch stated that the Respondent had been arrested in [REDACTED]. The criminal charges were dismissed and, according to the assistant district attorney, this was because [REDACTED] did not cooperate. Crouch stated that he requested documents from the [REDACTED], including a Domestic Incident Report (DIR) and a SCPD Statement Form prepared by [REDACTED] [Department's Exhibit (DX) 1 and 2].

On January 5, 2009, he conducted a telephone interview with [REDACTED] (DX 3 and 3b are the compact disc audio recording and transcript of the interview, respectively).

In discussing the matter with [REDACTED], Crouch learned that she and the Respondent

have had numerous domestic incidents since 1999 and that they were known to the

██████████ At the time of the incident, the Respondent and ██████████ ██████████

On cross-examination, Crouch agreed that the Respondent, at his official Department interview, had told him that four days prior to being arrested on December 7, 2008, ██████████ Crouch did not go to ██████████ to verify this. The last time Crouch spoke to ██████████ was in an interview in September 2010. She has not reached out to TBIU and, between January 2009 and September 2010, no one from TBIU had contact with ██████████.

On redirect examination, Crouch stated that in his last communication with her, ██████████ indicated that there had been some type of miscommunication as to what she had said. He explained that she had stated that the Respondent had told her not to cooperate with the Department but she later retracted that statement.<sup>2</sup>

On re-cross examination, Crouch stated that ██████████ initially said she was going to cooperate with the district attorney. He did not know what steps the district attorney took to contact her. He did not make any attempt to contact her. (At this point, it was stipulated that the Department did make efforts to reach ██████████ and that she was served with an administrative subpoena to come in on several occasions, but she did not).

Out-of Court Statements of ██████████

██████████ made statements to ██████████ on December 7, 2008, that were recorded in a DIR (DX 1) and a SCPD Statement Form (DX 2).

In the DIR, ██████████ wrote that she received a call from the Respondent on

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<sup>2</sup> At a post-trial conference, it was clarified that this statement and retraction by ██████████ did not involve the allegation in this case.

December 7, 2008, at 4 15 p m and he stated to her that he was going to kill her and her daughter

In the Statement Form [REDACTED] said that on the night of December 1, she went home and noticed that the lock/handle to her back door was loose and a pair of scissors was on the table. The next morning, she noticed her African Grey Bird was "not right." Upon visiting the veterinarian, a puncture wound was discovered on the bird's wing and he died the next day. On December 5, the Respondent went to [REDACTED]'s house and dug a grave for the bird. [REDACTED] told the Respondent that she did not know what happened to the bird, whereupon he said, "Maybe it was a scissor." Then, on December 7, 2008, at 4 15 p m, the Respondent called her at home and said, "I want you to fucking die, I'm going to kill you's, just like the bird."

In [REDACTED]'s telephone interview with Crouch on January 5, 2009 (DX 3a and 3b), she reiterated her written statements concerning the events of December 7, 2008.

#### The Respondent's Case

The Respondent testified in his own behalf.

#### The Respondent

The Respondent was appointed to the Department on August 30, 1993. He is currently on modified assignment at the Quartermaster Section. He has had this assignment since January 2007.<sup>3</sup> Prior to that, he was assigned to Transit District 23. He currently does not have a relationship with [REDACTED]. They became involved in 1996 and he lived with her from 1997 to 2007. [REDACTED] At

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<sup>3</sup> As in the record, should be 2009.

present, [REDACTED]  
[REDACTED]

In December 2007, he was residing with [REDACTED], while [REDACTED] was [REDACTED]. He was arrested on December 7, 2008, for Aggravated Harassment. Prior to that arrest he had tried to make changes to the custody arrangement.

He said in the months prior to the arrest he had told [REDACTED] that the relationship was over and that he wanted to move on with his life. He said she would not let him see his daughter because he wanted to take the child to the movies or out to dinner or overnight. After several months, he said, of "getting nothing" he went to [REDACTED]. [REDACTED] He believed he did that on December 3, 2008. He did not tell [REDACTED] about this.

The Respondent testified that he wanted to cut off contact with [REDACTED] because they were going to have a court case. He testified that she attempted to make calls to him. The Respondent testified, 'I said we discussed this for a couple of months we are not getting nowhere with this so we will let the Court handle it.'

The Respondent said that "she was trying to contact me numerous, numerous, numerous times." He said she wanted to meet with him to set up a face-to-face meeting with him to discuss not going to court and to discuss setting up visitation. He said they had already tried this and he did not want to talk to her and wanted to go to court and let the court handle it and come up with a solid, formal agreement.

The Respondent stated that [REDACTED] kept trying to contact him. He said on December 7, 2008, she tried several times to reach him. She texted him that their

When he called [REDACTED], nothing was wrong and she just wanted to meet with him. He told her again that he had no interest in talking to her and wanted [REDACTED] to handle it.

Later that day, he was at his father's house watching a football game when he answered a call from his mother's phone number. It was [REDACTED] calling from his mother's house and she said she was not going to leave until he came over. He told her he had no interest in seeing her and hung up the phone.

This occurred, he said, at about 6 00 p m He called his mother about ten minutes later and found that [REDACTED] had left He got home at about 8 00 p m He received a call from [REDACTED] at about 11 00 p m telling him he was going to be arrested and that he should turn himself in He notified the Operations Unit and then went to the [REDACTED] stationhouse

His case was ultimately dismissed. He stated that, other than seeing [REDACTED] in court, he has had no contact with her since [REDACTED]

The Respondent stated that [REDACTED] did have a bird and it died in early December 2008. He stated that he had nothing to do with the bird's death. The Respondent also stated that he never said that he was going to kill her like her bird and he never threatened

On cross-examination, the Respondent stated that he had no access to [REDACTED]'s house nor did he have a key to the house. The Respondent went to [REDACTED]'s house several times to visit [REDACTED]. He stated that he did not remember going to [REDACTED]'s house and digging a hole in her backyard to bury the bird.

The Respondent recalled having an official Department interview in connection

with this case on January 26, 2010. He was asked if it refreshed his recollection that he discussed burying the bird in the backyard during that interview. The Respondent stated, "I don't recall, I don't remember." The Assistant Department Advocate then read from the transcript of that interview, where the Respondent answered questions posed by Crouch.

Question Okay on December 5<sup>th</sup> two days prior to that, were you present at Ms [REDACTED]'s residence at any time?

Answer Yes

Question Okay what was your purpose of being present at the location?

Answer Her bird had passed away she picked it up from the vet she asked me to dig a hole to bury it

Question Okay and did you dig the hole for her

Answer Yes

Question Okay and did you bury the bird

Answer Yes

As to whether he remembered being asked those questions and giving those answers, the Respondent stated, "I do not remember the interview." He said that he did discuss the bird with [REDACTED] and that she told him the bird had passed away. He said he believed he learned about this when he went to see his daughter.

The Respondent agreed that he had stated that a week or two prior to December 7, 2008, [REDACTED] [REDACTED]

[REDACTED]

██████ He thought it was before December 7, 2008. He said he believed this was so because she tried to contact him before he was arrested. He agreed that this was not the first time the Department had been interested in his relationship with ██████. He agreed that there were other times when his relationship with ██████ had affected his employment. He said the first time this occurred was in 1999 and he maintained a relationship with her after that.

On re-direct examination, the Respondent stated he ceased living with ██████ in 2007. He said before that he was trying to save the relationship ████████████████████.

On questioning by the Court, the Respondent stated that he did not know how ██████ was served but he believed the ██████████ court system took care of it. He had no receipt of service. The first court appearance, he said, was on January 4 or 5, 2009. When asked if he recalled going to the official Department interview in January 2010, the Respondent stated, "I have been to many." As to this interview, he recalled that it occurred at Livingston Street in Brooklyn and he remembered being asked questions. The Court asked the Respondent if he now remembered the statements he made that had been read by the Assistant Department Advocate. The Respondent stated, "I don't remember if that is what I said I did." When asked again if he remembered saying that at the interview, the Respondent replied, "No. I don't remember the interview per every question that was asked of me."

The Court then asked if he remembered digging a hole for the bird and he answered, "Yes. Now that it has been brought up, yes." When asked how he came to dig the hole, the Respondent stated that he used to do lots of "odds and ends" for Braun, such as cutting the grass and taking care of the pool in the summertime. He said she had



asked him to dig a hole because her bird had passed away. He agreed that he had, in fact, buried the bird.

### FINDINGS AND ANALYSIS

The allegation in this case is simple [REDACTED]  
[REDACTED] They also had a failed relationship and a history of complaints of alleged domestic violence.

At the time of the incident, the parties were living separately and there was unchallenged testimony from the Respondent that there were ongoing disputes about [REDACTED]

Prior to the incident, [REDACTED] had a pet bird. According to her statement to SCPD, (DX 2) she noticed that the bird was "not right" and she took him to the veterinarian on December 3, 2008. There was a puncture wound, she stated, on the bird's wing. The bird died.

She said the Respondent came to her house on December 5, 2008, and dug a hole for her to bury the bird. She stated that she told the Respondent that she did not know how the wound had occurred. She stated that he said, "Maybe it was a scissor." She said that she did not think much of that statement at the time.

She further claimed that on December 7, 2008, the day she signed the statement, the Respondent called her and said, "I want you to fucking die, I'm going to kill you, just like the bird." She also expressed her concern that this threat was to both her and [REDACTED]  
[REDACTED]

The Respondent was arrested and charged with aggravated harassment. The

criminal charges were dismissed because of a lack of cooperation by [REDACTED] [REDACTED] was subpoenaed to testify at this proceeding but failed to appear, thus the only evidence the Department offered were the hearsay statements of [REDACTED]

*The Respondent denied the charges and claimed that the allegation is a fabrication in response to a petition he filed with [REDACTED]*

[REDACTED] The Respondent offered no documentation to back up this claim. He could not say when he filed the petition and could not assert that it was actually served on [REDACTED] in advance of her complaint.

There are other problems with the Respondent's claims in regard to this matter. During his testimony, the Respondent alleged that in the period before her allegation was made, their relationship had deteriorated to the point that he was no longer in contact with her. He claimed she sought him out but he refused to speak to her, preferring to deal with [REDACTED]. He even recounted a story of in which [REDACTED] went to his mother's house and called him on his mother's phone. He answered the call only because it appeared to be a call from his mother. She then refused to leave his mother's home until he spoke to her.

When the Respondent was asked on cross-examination if he went to [REDACTED]'s house to dig a grave for the bird, he denied doing so. That denial made sense in light of all of his testimony that he was avoiding contact with [REDACTED], who was actively seeking contact with him.

Unfortunately, he was confronted with a statement he made at his own official Department interview in January 2010 in which he had stated that he had gone to [REDACTED]'s house and dug a grave for the bird. Later in his testimony he admitted that in fact, he

had gone to her house and dug a grave for the bird

The Respondent's claims that he did not recall making the statement a little over a year ago and did not recall the event itself are not credible. The Respondent has been the subject of criminal and administrative charges related to these events almost immediately after they were alleged to have occurred. The claims that he had no recollection of going over to her house, digging a grave for the bird and then burying it defy logic and common sense. Similarly, his claim not to remember admitting to that conduct at an official Department interview is equally implausible. Going to bury the bird did not fit into the narrative the Respondent put forward at this trial and that apparently is the only reason he did not "remember."

There are other problems with the Respondent's story. He testified that in the months before his arrest, he had told [REDACTED] that he was going to seek the help of [REDACTED] [C]ourt. Yet he claimed to have denied telling her about going to court and filing a petition. He claimed the reason he was going to court was because she was denying him visitation. Yet, when he finally admitted to going to [REDACTED]'s house to bury the bird, it was, he said, in connection with visiting his child. Certainly the Respondent's ability to recall events and his credibility are at issue.

Hearsay evidence is admissible in this forum and may constitute the sole basis for a determination in an administrative proceeding, *Gray v. Adduci*, 73 N.Y. 741 (1988), that hearsay evidence must be so substantially reliable and probative that an inference of the existence of a fact may be reasonably drawn, *Gramatan Ave. Associates v. State Division of Human Rights*, 45 N.Y.2d 176, (1978) (see also *People ex rel. Vega v. Smith*, 66 N.Y.2d 130, 139, *Matter of Grossman v. Karalik*, 217 A.D.2d 625 (AD 2<sup>nd</sup> Dept. 1995)).

In this case, the Department has presented two written statements made by [REDACTED] under the penalties of perjury immediately after the event. These two statements, the DIR which was witnessed by a police officer and the Statement Form which is notarized, are consistent and credible. [REDACTED] was interviewed by Crouch in January 2009 and gave a narrative verbal statement which is also consistent. Under the circumstances of this case this Court finds these affidavits to be substantially reliable and thus sufficient evidence of the claim that the Respondent made a statement to the effect that he would kill [REDACTED] just like the bird. The statement was clearly intended to cause annoyance and alarm and [REDACTED]'s statements indicate that it did. The Respondent is found Guilty.

#### PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined, see *Matter of Pell v Board of Education*, 34 N Y 2d 222 (1974).

The Respondent was appointed to the Department on August 30, 1993. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found guilty of making a threat over the telephone to [REDACTED] conduct which would constitute a class "A" misdemeanor under the penal law. He has previously been subject to disciplinary penalty by this Department related to a domestic violence incident.

In light of the serious nature of the charges and the fact that the Respondent has previously been subject to disciplinary sanction in a domestic violence incident, the Court recommends that the Respondent be DISMISSED from the New York City Police

Department but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings Further this Court recommends that the Respondent forfeit the 30 days he served on pre-trial suspension.

Respectfully submitted,

  
Martin G. Karopkin

Deputy Commissioner – Trials

**APPROVED**  
  
SEP 28 2011  
RAYMOND W. KELLY  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From Deputy Commissioner – Trials  
To Police Commissioner  
Subject CONFIDENTIAL MEMORANDUM  
POLICE OFFICER LAWRENCE ABENANTI  
TAX REGISTRY NO 911591  
DISCIPLINARY CASE NO 84911/09

In his last three annual evaluations, Respondent received an overall rating of 3.5  
“Highly Competent/Competent” in 2007, 4.0 “Highly Competent” in 2008, and 4.0  
“Highly Competent” in 2009. [REDACTED]

[REDACTED] On February 14, 2008, Respondent was placed on  
Level-II Domestic Monitoring as a result of serious misconduct.

Respondent has been the subject of one prior disciplinary proceeding. On  
October 1, 1999, the Respondent wrongfully engaged in a physical altercation with an  
individual known to the Department and forfeited 30 suspension days.

For your consideration

  
Martin G. Karopkin  
Deputy Commissioner – Trials